

REMARKS/ARGUMENTS

Claims 1 and 2-15 are in the application. No claims have been amended. No new matter has been added.

Applicant gratefully acknowledges the courtesy of Examiner Ouellette in granting a telephonic interview to Applicant's representative, Mr. Christopher Kilner, on July 31, 2008. Applicant's Interview Summary is attached hereto.

Claim Rejections - 35 USC 112

Claims 1 and 7 (and the claims depending therefrom) were rejected for alleged failure to satisfy the Written Description requirement of 35 USC 112.

However, as discussed in the interview, the amended claim language has support in paragraphs [10], [110], [122], and [127] and Examiner Ouellette agreed to withdrawal of this rejection.

Claim Rejections - 35 USC 103

Claims 1, 3-5, 7-10, and 12-15

Claims 1, 3-5, 7-10, and 12-15 were rejected as being obvious in view of the published application of Arunapuram et al. Applicant again traverses this rejection and incorporates by reference the arguments filed previously with regard to Arunapuram et al. on 27 March 2006, 01 December 2006, 24 August 2007, and 11 March 2008.

As discussed in the interview, claims 1 and 7 were previously amended to include limitations to use of *monitoring and communications that are independent of the local infrastructure*. Arunapuram et al., and in particular the cited paragraph 34, fails to teach or fairly suggest these limitations. Examiner Ouellette agreed that Arunapuram et al. lacked this limitation and indicated that the present rejections based upon Arunapuram et al. would be withdrawn during the interview. However, further search and consideration would be required prior to any possible indication of allowability of the claims.

The "Local Infrastructure"

As used in the specification, the "local infrastructure" refers to the existing infrastructure of the local process being monitored. For example, paragraph [10] of Applicant's specification states:

“Unlike other traditional proprietary or point solutions that focus on event management of limited data sources, the process exception detection means of the present invention is designed for flexible monitoring, not control, of a broad range of source data - including but not limited to *production equipment, environmental sensors, metrology/quality equipment, facilities sensors, applications, databases, and news feeds* - independent of local infrastructures including communication and information systems. This provides the ability to monitor particular parameters relating to specific transactional as well as qualitative measures that are both intrinsic and extrinsic to the local and global processes.” (Emphasis added by underlining)

Similarly, paragraph [122] of Applicant’s specification states:

“The communication can escalate up from the local network to a modem, to a mobile link, to even a satellite (it costs about \$1500 to put the satellite-link on the roof of a building). The satellite link is desirable where the local communication infrastructure is poor. Paging is a last resort, paging someone locally to report a problem communicating with the messaging controller. The present invention can therefore be set so that it will cycle through different modes of communication that are pre-determined. For example, it could try the network connection first, if it can’t get through on the network, it could try modem connection, if it can’t get through on the modem connection, it could try a mobile connection or RF connection, and finally, it could try to send it out through a satellite link.” (Emphasis added by underlining)

From this, it is clear that the “local infrastructure” refers to the infrastructure of the local process – i.e., the process being monitored. As such, the claimed limitation with respect to “local communication and information systems infrastructures” refers to the existing communication and information system of the local process being monitored. As such, an added telephone line, modem connection, mobile or RF connection, or satellite link – that was not part of the process prior to being monitored – is “independent of the local communication and information systems infrastructures” of the process.

Further support for Applicant’s position that “local infrastructure” refers to the local process being monitored can be found in Provisional Application Ser. No. 60/359,007. While it is Applicant’s position that the broadest reasonable interpretation under MPEP 2111 of the “local infrastructure” is the infrastructure of the local process to be monitored, Applicant herein agrees to an Examiner’s Amendment to add “of the

identified process” to the end of claims 1 and to add “of the process” to the end of claim 7 if it is determined to be necessary by the Examiner.

In Arunapuram et al., the monitoring and networking of the system components, unlike the presently-claimed invention, is an integral part of the original shipping process, and the arrival/non-arrival of packages in Arunapuram et al. are simply events that are anticipated by the process – not process exceptions as presently disclosed and claimed.

Similarly, the tracking in Arunapuram et al. is part of the delivery process infrastructure, so any monitoring and communication of package delivery are inherently performed by the local infrastructure, which clearly fails to meet the claim limitations of independent claims 1 and 7 and the claims that depend therefrom.

Non-Functional Descriptive Data – Claims 5, 10, and 12-15

Claims 5, 10, and 12-15 further included rejection elements based upon alleged “nonfunctional descriptive data.” However, Applicant respectfully submits that none of the claimed limitations fall within this category; in accordance with MPEP 2106.01, “nonfunctional descriptive material” includes, but is not limited to, music, literary works, and a compilation or mere arrangement of data. The category of rejection deals with non-statutory subject matter under 101, not an interpretation of claims under 35 USC 102/103 that says the limitation can be ignored, as done in the present Office action.

While office action cites the cases to *Gulack* and *Lowry*, these cases stand for the following: “USPTO personnel must consider all claim limitations when determining patentability of an invention over the prior art. *In re Gulack*, 703 F.2d 1381, 1385, 217 USPQ 401, 403-04 (Fed. Cir. 1983). USPTO personnel may not disregard claim limitations comprising printed matter. See *Gulack*, 703 F.2d at 1384, 217 USPQ at 403... USPTO personnel need not give patentable weight to printed matter absent a new and unobvious functional relationship between the printed matter and the substrate. See ** *Lowry*, 32 F.3d **>at< 1583-84, 32 USPQ2d **>at< 1035 **; *In re Ngai*, 367 F.3d 1336, 70 USPQ2d 1862 (Fed. Cir. 2004).”

While MPEP 2112.01 says non-functional printed matter cannot distinguish a product claim, the present claims do not involve either printed subject matter or product claims.

During the interview, Examiner Ouellette agreed to withdraw this ground of rejection.

Claims 6 and 11

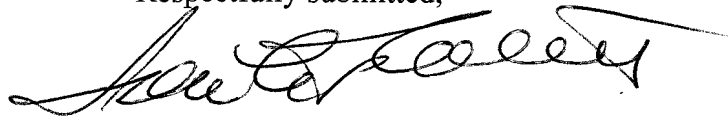
Claims 6 and 11 were rejected as obvious over Arunapuram et al. in view of Delaney et al. However, Delaney et al. fails to cure any of the deficiencies of Arunapuram et al. with respect to claims 1, 3-5, and 7-10 and the use of *monitoring and communications that are independent of the local infrastructure*. As such, claims 6 and 11 are allowable for the same reasons as claims 1 and 7.

Conclusion

For the reasons cited above, Applicant submits that claims 1 and 3-15 are in condition for allowance and requests reconsideration of the application.

Applicant notes that this application has been pending for more than six (6) years, that the original provisional application was filed pre-9/11 in early 2001, and that this is the second RCE in this case. If there remain any issues that may be disposed of via a telephonic interview, the Examiner is kindly invited to contact the undersigned at the local exchange given below. Alternatively, Applicant's counsel requests an interview on any remaining issues before any office action is issued.

Respectfully submitted,



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